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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,681	03/18/2004	Eugene John Moore	94350.00004	5926

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McCARTER & ENGLISH, LLP  
Attn.: Anita Lomartra  
CityPlace I  
185 Asylum Street  
Hartford, CT 06103

EXAMINER	
HOEKSTRA, JEFFREY GERBEN	
ART UNIT	PAPER NUMBER

3736

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,681	<b>Applicant(s)</b> MOORE, EUGENE JOHN	
	<b>Examiner</b> Jeffrey G. Hoekstra	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☒ Claim(s) 1,2,4,9 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Priority***

1. It is noted Applicant claims the benefit of a prior-filed application under 35 U.S.C. 60/456,460 filed on 03/21/03.

### ***Information Disclosure Statement***

2. The information disclosure statement(s) (IDS) submitted on 09/27/2004 is/are acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the examiner is considering the information disclosure statement(s).

### ***Drawings***

3. The drawings are objected to because Figures 2-4 appear illegible due to small and blurry text. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or

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"New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

4. Claims 1, 2, 4, 9, 12, and the specification are objected to because of the following informalities: it is suggested that the recitation of "gage" appear as "gauge" because it is more commonly recited as an instrument for measuring or testing. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 11, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Israel (US 2002/0010393 A1).

7. Israel discloses a non-invasive intraocular pressure measuring tonometer 30 as best seen in Figure 5, comprising: (a) a substantially L-shaped frame or housing (paragraphs 17 and 21); (b) a force measuring strain gauge (paragraph 35) mounted to

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said frame via a stop (paragraph 21); (c) a distance measuring linear variable displacement transducer (paragraph 34) mounted to said frame via a stop (paragraph 21), said linear variable displacement transducer communicating with an axially movable sensing tip 40 including a substantially flat circular end; (d) an output display 38 that includes LED emitters for displaying the measured intraocular pressure; and (e) a processor 36 communicating with said strain gauge and said linear variable displacement transducer by way of data communication wires (paragraph 21 and 47), said processor programmed to (i) time-synchronize signals received from said strain gauge and said linear variable displacement transducer (paragraphs 16-21), and (ii) identify a change in the relationship between time-synchronized measurements of said force and said distance wherein said change in the relationship between time-synchronized measurements of said force and said distance correlates with a patient's intraocular pressure (paragraphs 16-21).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6-8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Israel in view of Wallace (US 6,394,968 B1). Israel discloses the claimed invention except for the processor being an integrated circuit that is mounted to said frame and provides signal amplification, low pass signal filtering, and signal rectification. Wallace

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teaches a non-invasive intraocular pressure measuring tonometer 20 having a processor 42 being an integrated circuit 44 that is mounted to said frame and provides signal amplification 46, low pass signal filtering, and signal rectification (column 5 lines 6-32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Israel, with Wallace for the purpose of signal modification/calibration for increased efficacy of intraocular pressure measurement.

10. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Israel in view of Feldon et al (US 6,776,756 B2). Israel discloses the claimed invention except for the processor including a digital acquisition card that transmits signals to software, including spreadsheet functionality, suitable to time-synchronize the signals received from the strain gauge and the linear variable displacement transducer and to identify an inflection or change in the relationship between the time-synchronized force and distance measurements. Feldon et al teaches a non-invasive intraocular pressure measuring tonometer having a processor 18 including a digital acquisition card that transmits signals to software suitable to time-synchronize the signals received from the strain gauge and the linear variable displacement transducer, to identify an inflection or change in the relationship between the time-synchronized force and distance measurements, and inherently capable of having spreadsheet functionality (columns 7 and 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Israel, with Feldon et al for the

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purpose of signal modification/calibration for increased efficacy of intraocular pressure measurement.

11. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Israel in view of Zias et al (US 2003/0072127 A1). Israel discloses the claimed invention except for the strain gauge and linear variable displacement transducer being micro-electromechanical systems. Zias et al teaches displacement, force, and pressure measuring micro-electromechanical sensors 200. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Israel, with Zias et al for the purpose of configuring pressure measurement in a lightweight handheld medium.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday, 8:00 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGH



MAX F. HINDENBURG  
SUPERVISORY PATENT EXAMINER  
ELECTRONIC CENTER 3700